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**United States Government Accountability Office  
Washington, DC 20548**

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## **Decision**

**Matter of:** Metson Marine Services, Inc.

**File:** B-299705

**Date:** July 20, 2007

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Margaret A. Dillenburg, Esq., Law Offices of Margaret A. Dillenburg, PC, and Alexander J. Brittin, Esq., Brittin Law Group, PLLC, for the protester. Richard P. Rector, Esq., and Carl L. Vacketta, Esq., DLA Piper US LLP, for Seaward Services, Inc., an intervenor. Joel A. Weger, Esq., and Pamela Castellano, Esq., Department of the Navy, Military Sealift Command, for the agency. Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Agency reasonably determined that protester's proposal was technically unacceptable and that it would not conduct further discussions with the protester, where protester's final revised proposal, submitted after extensive discussions, failed to meet the solicitation's requirements for a key personnel position.

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### **DECISION**

Metson Marine Services, Inc. protests the award of a contract to Seaward Services, Inc. under request for proposals (RFP) No. N00033-06-R-1012, issued by the Department of the Navy, Military Sealift Command (MSC) to obtain port operation and vessel management services for the Athena high speed research vessel system.<sup>1</sup> Metson protests that the agency unreasonably concluded that its proposal was technically unacceptable, failed to conduct meaningful discussions with Metson, and conducted an unreasonable evaluation of Seaward's past performance.

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<sup>1</sup> This is the first of two separate follow-on contracts awarded to Seaward under RFP Nos. N00033-06-R-1012 (the "Athena solicitation") and N00033-06-R-1013 (the "Dive School solicitation"). Because the issues raised by Metson challenging each award are separate and distinct, we have addressed the protest of each procurement separately.

We deny the protest.

## BACKGROUND

The MSC operates two Athena system vessels in support of Naval activities at the Naval Surface Warfare Center in Panama City, Florida that includes engineering support, trial planning, security, and logistic support. RFP at 13. The RFP sought proposals to provide all personnel, equipment and materials necessary to support the Athena operations and contemplated the award of a fixed-price contract with reimbursable items for a base year with four 1-year options. *Id.* at 10, 13, 35.

The RFP provided that award would be made on a “best value” basis, considering three evaluation factors: technical quality, past performance, and price. The technical quality evaluation factor was comprised of five subfactors which were equal in importance: management overview and experience; organization and personnel; operational capabilities; maintenance capabilities; and management processes. RFP at 69, 70. Although not disclosed in the solicitation, an unacceptable rating under any of the technical quality evaluation subfactors would render the technical proposal unacceptable overall. Agency Report (AR) exh. 4, Source Selection Plan (SSP), at app. E-1. The RFP advised that the technical quality evaluation factor was more important than past performance, and that the technical quality and past performance evaluation factors together were more important than price. *Id.* The RFP also informed offerors that in selecting the best overall proposal, the agency would consider the relative technical quality of proposals based upon the evaluation of each offeror’s ability to exceed the minimum performance requirements of the solicitation. RFP at 70.

Of relevance to this protest, the RFP identified various key personnel positions—such as project manager (PM)—and required offerors to propose personnel meeting the stated qualifications.<sup>2</sup> RFP at 24. The qualifications for the PM position were listed as “must have the equivalent of ten (10) years experience directly related to the performance requirements of this Contract” and a “Bachelor of Science Degree in management, Marine Transportation or Engineering or comparable experience.” *Id.*

The agency received three proposals from Seaward, Metson, and a third offeror by the October 5, 2006 closing date. The agency’s evaluation panel rated the offerors’ proposals under the non-price factors using a qualitative adjectival system and all

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<sup>2</sup> The solicitation required submission of resumes for all key personnel and further required letters of intent if the proposed key personnel were not currently employed by the offeror. RFP at 66.

were rated technically unacceptable.<sup>3</sup> Since none of the initial proposals were rated as technically acceptable, the agency opened discussions with all three offerors, initiating these discussions by emailing written items for discussion on December 19, 2006. In the December 19 email to Metson, the agency identified multiple specific non-price and price issues that Metson needed to address. AR exh. 15, Metson Summary Items for Discussion; Contracting Officer (CO) Statement at 5-6. The agency's email summarized the agency's concerns, stating, in part, as follows:

- Metson Marine's proposal states that the [DELETED]. Please note that C 13.4.1 states that the [DELETED] "position cannot be collateral duty with any other position."
- Please provide further information regarding [DELETED] relevant experience.

AR exh. 15, Metson Summary Items for Discussion, at 2.

On December 20, the agency followed up the December 19 email by conducting oral discussions by telephone with Metson; during these discussions, Metson was afforded an opportunity to provide comments regarding the matters addressed in the December 19 email. During its telephone discussions with the agency, Metson acknowledged the agency's concern regarding its [DELETED] and indicated that the firm would respond to this concern in its final proposal revisions (FPR). CO Statement at 6; AR exh. 25, Metson's Responses to Summary Items for Discussion, at 2.

FPRs were submitted by the February 6, 2007 due date. The final consensus ratings for Metson and Seaward were as follows:<sup>4</sup>

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<sup>3</sup> In accordance with the SSP, proposals could receive overall ratings of exceptional, acceptable, marginal and unacceptable under the technical quality evaluation factor. AR exh. 4, SSP, at app. E-1.

<sup>4</sup> Because they are not relevant to the protest issues raised, the third offeror's ratings are not included here.

	<b>SEAWARD</b>	<b>METSON</b>
<b>1. Technical Quality Factor Overall</b>	<b>Acceptable</b>	<b>Unacceptable</b>
Management Overview & Experience	Exceptional	Acceptable
Organization & Personnel	Acceptable	Unacceptable
Operational Capabilities	Acceptable	Acceptable
Maintenance Capabilities	Acceptable	Acceptable
Management Processes	Exceptional	Exceptional
<b>2. Past Performance</b>	<b>Exceptional</b>	<b>Exceptional</b>
<b>3. Total Evaluated Price</b>	<b>\$5,574,946.69</b>	<b>\$5,830,990.00</b>

AR exh. 28, Final Evaluation Consensus Report, at 3-7; AR exh. 29, Final Past Performance Evaluation, at 1-4; AR exh. 31, Final Price Evaluation Report.

Based on these evaluation findings, the CO, who served as the source selection authority, determined that Seaward’s technically acceptable, low-priced proposal represented the best value to the government. In reaching this conclusion, the CO found that further discussions were unnecessary because Seaward’s proposal included advantages that made it a more technically advantageous proposal. With respect to the other offerors, the CO specifically found that:

[t]wo of the offerors that submitted [FPRs] were evaluated as Unacceptable overall, demonstrating that the offeror’s proposal omits required information and has a poor possibility of meeting requirements and/or presents significant technical risk to the Government, requiring extraordinary Contractor effort and Government monitoring to overcome difficulties. The SSP states, “An ‘unacceptable’ final rating on any technical subfactor renders the technical proposal ‘unacceptable’ overall. Any offeror who receives a rating of Unacceptable on any factor or subfactor cannot receive an award.”

AR exh. 32, Source Selection Decision, at 3. Accordingly, Seaward’s proposal was selected for award and Metson was notified of the selection. After being debriefed, Metson filed this protest.

## DISCUSSION

Metson protests that the agency failed to conduct meaningful discussions. More specifically, Metson maintains that when Metson’s [DELETED] was found not to meet the RFP requirements for this key personnel position, the agency was obligated to follow up with further discussions. Had it done so, the protester asserts, the agency “would have realized that Metson’s proposed [DELETED] was not only

qualified, but exceeded the qualifications of the Seaward-proposed [DELETED]. Protest at 5; Protester's Comments at 2-5.

As discussed above, the agency identified each and every area which it viewed as weak in Metson's initial proposal, including the experience level of Metson's [DELETED]. With regard to the specific question addressing the experience of Metson's [DELETED], Metson responded by proposing [DELETED] in its FPR. Metson now maintains that, if this [DELETED] was considered unqualified, the agency was required to permit Metson to submit further revisions to its proposal. We disagree.

When an agency engages in discussions with an offeror, the discussions must be meaningful. Training and Mgmt. Res., Inc., B-234710, June 29, 1989, 89-2 CPD ¶ 12 at 2. However, this requirement for meaningful discussions does not create an obligation for agencies to continue to conduct successive rounds of discussions and proposal revisions until all proposal defects have been corrected. OMV Med., Inc., B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 7. Similarly, an offeror's creation of a proposal defect which first appears in a proposal revision following discussions does not trigger an obligation to engage in another round of discussions and proposal revisions to advise the offeror of the newly-created deficiency and permit attempted correction. Cube-All Star Servs. Joint Venture, B-291903, Apr. 30, 2003, 2003 CPD ¶ 145 at 10-11.

Here, as discussed above, the agency engaged in written and oral discussions with Metson following submission of its initial proposal. During these discussions, the agency sought specific information regarding the experience of [DELETED] Metson had [DELETED]. The record establishes that these discussions clearly communicated agency concerns and were meaningful. Further, the record shows that Metson's introduction of [DELETED] in its FPR [DELETED], who did not possess the requisite qualifications, precluded the agency from accepting its proposal without obtaining additional information. As noted above, MSC had no obligation to reopen discussions following submission of FPRs in order to provide Metson with yet another opportunity to address the agency's previously identified concerns.

Metson next protests that it was unreasonable for the agency to conclude that Metson's [DELETED] failed to meet the solicitation qualification requirements for this personnel position, arguing that this individual's qualifications not only met, but exceeded, the solicitation requirements. In reviewing a protest of an agency's proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. AHNTECH, Inc., B-295973, May 11, 2005, 2005 CPD ¶ 89 at 3; Gemmo Impianti SpA, B-290427, Aug. 9, 2002, 2002 CPD ¶ 146 at 3.

The record shows that Metson's proposal was rated as unacceptable under the technical quality subfactor, organization and personnel, after the evaluators concluded that Metson's [DELETED] also lacked the [DELETED] requirements set forth in the RFP. In this regard, the evaluators specifically noted that the [DELETED]. AR exh. 28, Final Evaluation Consensus Report, at 4; AR exh. 9, Metson's FPR, Resumes & Letters of Intent. Since there is nothing in the record to indicate that Metson's [DELETED] met the RFP's qualification requirements for this position, we find nothing unreasonable in the agency's findings; accordingly, there is no basis for us to object to this aspect of the evaluation. Although Metson continues to express disagreement in this regard, Metson has provided nothing to establish that the agency's determination was unreasonable. See Caterpillar, Inc., B-280362, B-280362.2, Sept. 23, 1998, 98-2 CPD ¶ 87 at 6.

The protest is denied.<sup>5</sup>

Gary L. Kepplinger  
General Counsel

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<sup>5</sup> Metson also challenges the agency's evaluation of Seaward's past performance and the resulting selection decision. Specifically, Metson argues that the agency should have downgraded Seaward's past performance, given that Seaward was the incumbent contractor at the time a fire occurred on the Athena II in January 2007. As a preliminary matter, we are not convinced that an onboard fire necessarily translates into a negative past performance assessment. In addition, the agency has advised that the causes of the fire were still under investigation at the time of this evaluation. Moreover, we think that Metson, as a result of being found unacceptable, lacks standing to raise this issue. In order to maintain a protest in our Office, a firm must be an interested party, that is, an actual or prospective bidder or offeror whose direct economic interest will be affected by the award of or failure to award a contract. 4 C.F.R. § 21.0(a) (2007). A protester is not an interested party where it would not be in line for award were its protest to be sustained. Yoosung T&S, Ltd., B-291407, Nov. 15, 2002, 2002 CPD ¶ 204 at 4. Metson is ineligible for award here because, as discussed above, the agency reasonably found its proposal technically unacceptable. Thus, even if Seaward's proposal was assigned a lower past performance rating—we have no basis to conclude that Seaward should have been viewed as unacceptable—Seaward remains the only technically acceptable offer, and remains in line for award.